IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 18332 of 2007(G)

AGAINST THE ORDER DATED 27/10/2006 IN IA. 2284 /2005 IN AS.172/1992 of I ADDL.DISTRICT COURT, KOZHIKODE

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PETITIONER:

PUTHANPURAYIL BALAKURUP,
VAIKKILASSERI AMSOM, DESOM,
VADAKARA.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

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1. PARAMMAL UMMAYYA HAJJUMMA, CHORODE AMSOM, VADAKARA.

2. PARAMMAL ABOOBACKER HAJI, CHORODE AMSOM, DESOM, VADAKARA TALUK.

3. OONHAMPARAMBATH RAGHAVAN, ERAMALA AMSOM, ORKKATTERI DESOM, VADAKARA.

4. THAMARAKKULATH AHAMMED, ERAMALA AMSOM, ORKKATTERI DESOM, VADAKARA TALUK.

5. THAMARAKKULATH KOROTH PARAMBATH KADEESHA, ERAMALA AMSOM, DO.

6. THAMARAKKULATH IBRAHIM, ERAMALA AMSOM, DO.

7. THAMARAKKULATH MAMMI DO.

8. THAMARAKKULATH KADEESHA, DO.

9. DAUGHTER - SAMEERA (MINOR) AGED 8 YEARS, (REPRESENTED BY GUARDIAN 8TH RESPONDENT.

10. DAUGHTER - AYISHA (MINOR) AGED 12 YEARS, -DO-

11. ASSAN HAJI, AYADATHIL, ORKKATTERI AMSOM
DESOM, VADAKARA, TALUK.

12. SON - NASAR T.K., -DO-

13. SEKKEER T.K., -DO-

14. SATHAR T.K. -DO-

15. SEKKEELA T.K., KULIRMA HOUSE,
MANNARKUNI, CHORODE AMSOM, DESOM,
VADAKARA TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.(C) No. 18332 OF 2007 G
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Dated this the 15th June, 2007

J U D G M E N T

This writ petition is filed challenging the order passed in I.A. No. 2284/05 which is one to condone the delay in filing the application and restore the appeal which was dismissed for default. The petitioner in the I.A. is the appellant in the case and the 4th defendant in O.S. No. 109/90 of the Subordinate Judge's Court, Vatakara. The matter reached upto the High Court and the High Court allowed the second appeal and remanded both the appeals to the Sub Court for consideration. As the appellant did not appear before the court it was dismissed for default. It is to restore that appeal and to condone the delay of 191 days the petition is filed. The reason averred is that the petitioner is a heart patient and was suffering from hypertension and hyperlipidemia. A medical certificate was produced in support of the said contention. The appellate court considered it as genuine and found that there was sufficient cause which prevented her from appearing before the court on the particular day. The court also

specifically took note of the fact that it is the fourth round of litigation and ordinarily a client would not be negligent in that. I am also aware of the principles that the broad principles of natural justice always demand that a matter should be heard on merits and it has been held in the decision reported in ***Plantation Corporation of Kerala Ltd. v. Hussain*** (1998 (1) KLT 1008) that unless there is something which amounts to gross negligence and grave misconduct a litigant should not be deprived of an opportunity to putforth his case on merits. A party who has been litigating and litigating from the trial court to the High Court was not present on the date of appearance that should not be a ground to throw him out unless his gross negligence is proved. The appellate court has found that the reasons alleged are genuine and therefore I do not find any grounds to interfere with the said decision. The writ petition stands dismissed.

M.N. KRISHNAN
JUDGE

jan/